

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

BILLY JOE FIARRIS,	)	
	)	
Plaintiff,	)	
vs.	)	NO. CIV-05-0250-HE
	)	
EVERETT VAN HOESEN and	)	
STEPHANIE BURKS,	)	
	)	
Defendants.	)	

**ORDER**

Plaintiff Billy Joe Fiarris, a state prisoner, instituted this § 1983 action alleging a violation of his constitutional rights. Consistent with 28 U.S.C. §636(b)(1)(B), the matter was referred for initial proceedings to Magistrate Judge Robert E. Bacharach, who has issued a Report and Recommendation, suggesting that a motion to dismiss filed by the defendants be granted because the plaintiff failed to exhaust his administrative remedies, as required by the Prison Litigation Reform Act. 42 U.S.C. § 1997e(a).


The court concurs with the Magistrate Judge's analysis that dismissal is appropriate for failure to exhaust. The court also notes that the petitioner failed to object to the Report and Recommendation and thus waived his right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996), *cert. denied*, 519 U.S. 909 (1996). *See* 28 U.S.C. § 636(b)(1)(C); LCvR72.1(a).

Accordingly, the court adopts Magistrate Judge Bacharach's Report and Recommendation, **GRANTS** the defendants' motion to dismiss [Doc. #23] and **DISMISSES**

the action without prejudice to refile. Defendants' motion to deem their motion to dismiss confessed [Doc. #26] is **STRICKEN** as **MOOT**.

**IT IS SO ORDERED.**

Dated this 18<sup>th</sup> day of January, 2006.



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JOE HEATON  
UNITED STATES DISTRICT JUDGE